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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 538/2013

Decision adopted by the Committee at its fifty-fourth session (20 April–15 May 2015)

Submitted by:	Khairullo Tursunov (represented by counsel, Mutabar Tadjibayeva, international human rights association Fiery Hearts Club)
Alleged victim:	The complainant
State party:	Kazakhstan
Date of complaint:	14 February 2013 (initial submission)
Date of present decision:	8 May 2015
Subject matter:	Extradition to Uzbekistan
Substantive issue:	Risk of torture upon return to the country of origin
Procedural issue:	None
Articles of the Convention:	Articles 3 and 22

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session)

concerning

Communication No. 538/2013*

Submitted by:	Khairullo Tursunov (represented by counsel, Mutabar Tadjibayeva, international human rights association Fiery Hearts Club)
Alleged victim:	The complainant
State party:	Kazakhstan
Date of complaint:	14 February 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 2015,

Having concluded its consideration of complaint No. 538/2013, submitted to it by Khairullo Tursunov under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is Khairullo Tursunov, a citizen of Uzbekistan born in 1975. The complainant claims that his extradition to Uzbekistan would constitute a violation by Kazakhstan of article 3 of the Convention. He is represented by counsel, Mutabar Tadjibayeva, of the international human rights association Fiery Hearts Club.

1.2 Under rule 114 of its rules of procedure, the Committee requested the State party, on 28 February 2013, not to extradite the complainant to Uzbekistan while his communication was under consideration by the Committee. Nevertheless, the complainant was extradited to Uzbekistan on 13 March 2013.

The facts as presented by the complainant

2.1 The complainant is a citizen of Uzbekistan and a devout follower of Islam who has been practising his religion outside strict State control. After the explosion of six car bombs

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Felice Gaer, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

in Tashkent on 16 February 1999, all Muslim men from the complainant's village were taken by the police officers of Beshkent and questioned about their religious affiliation. According to the complainant, the surveillance and questioning by the police lasted until 2004. On 7 April 2004, the officials of the National Security Service arrested the complainant, beat him and questioned him about his religious education. After one month, he was indicted for criminal conspiracy and association with Al-Qaida. On 20 October 2004, the Qashqadarinsky Regional Court of Uzbekistan sentenced him to 12 years in prison for religious extremism in conspiracy with 18 people whom he alleges that he did not know. On 2 February 2005, he was released under a general amnesty act. However, he continued to receive daily visits from a district police officer, which stopped after he complained to the National Security Service. In March 2005, the complainant was asked by the Beshkent Office of the Procurator to withdraw his complaint. The complainant refused and as a result the district police office started summoning him every month and questioning him about his activities and which mosque he attended. The summons continued until 2009. In August 2009, the complainant was approached by three prostitutes in front of the police. He was immediately arrested, accused of violating the honour of the women and, on the next day, sentenced to 10 days of deprivation of liberty. Until his release on 2 September 2009, officers of the National Security Service beat him and enquired about other followers of Islam. On 15 September 2009, the complainant fled Uzbekistan to escape constant harassment by the authorities. He went first to the Russian Federation, where a representative of the non-governmental organization (NGO) Memorial advised him to seek asylum with the Office of the United Nations High Commissioner for Refugees (UNHCR) in Kazakhstan. After the complainant left Uzbekistan, his wife was questioned about his whereabouts by the National Security Service and had to flee the country. In November 2009, she joined him in Almaty with their three underage children. In 2012, she was charged with illegal exit from Uzbekistan.

2.2 Upon arrival to Kazakhstan, on an unspecified date, the complainant applied for asylum with UNHCR and the Committee on Migration of Kazakhstan. The complainant does not provide information on the decision that UNHCR took on his application, contending that he cannot recall it. In October 2010, the Committee on Migration rejected his application. The complainant did not appeal, allegedly not being aware of such a possibility.

2.3 In a resolution of 24 February 2012 of the Office of the Procurator General of Uzbekistan, the complainant was indicted of committing crimes in Uzbekistan under six articles of the Criminal Code, including terrorism; incitement to national or religious hatred; illegal establishment of a religious organization; and establishment, management and participation in a religious, extremist, separatist, fundamentalist or other illegal organization. The complainant was put on a wanted list. His arrest was ordered by the Qarshi Court in Uzbekistan on the same date. On 7 April 2012, he was detained in Aktobe, Kazakhstan. In a letter dated 27 April 2012, the Uzbek Office of the Procurator General sent an extradition request to the Kazakh Office of the Procurator General regarding the complainant. The complainant's detention for the purpose of extradition was extended on 9 April 2012, 3 May 2012, 1 September 2012, 25 December 2012 and 18 January 2013.

2.4 On 25 October 2012, the First Deputy Procurator General of Kazakhstan granted the extradition request of the Office of the Procurator General of Uzbekistan on the basis of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (the Minsk Convention) of 1993. The complainant appealed this decision before the Aktobe City Court No. 2. On 25 December 2012, the extradition decision was confirmed by that Court. On 3 January 2013, the complainant filed an appeal with the Aktobe Regional Court, which was rejected on 18 January 2013. In his appeals, the complainant argued that the criminal charges against him in Uzbekistan were fabricated and that he would risk torture if extradited. Before the appellate instance court, he also claimed that the proceedings in the

first instance court were unfair because an interpreter was not provided to him after he stated that he did not speak Russian. In their decisions, both courts stated that it is beyond their jurisdiction to review the legality of charges brought against the complainant in a foreign country and that their role is to assess whether the extradition is in accordance with the national legislation and international obligations of Kazakhstan. The courts also stated that the complainant's request for asylum was denied by the Committee on Migration in 2010 and did not assess further his allegations of a risk of torture upon extradition. Regarding the complainant's complaint on the failure of the first instance court to provide him with interpretation, the Aktobe Regional Court stated that the records of the first instance court proceedings suggest that neither the complainant nor his lawyer requested interpretation, despite being informed of this right by the court.

2.5 On 13 March 2013, the complainant was extradited to Uzbekistan in spite of the Committee's request for interim measures of protection aimed at suspending the extradition pending the consideration of the present case. On 12 April 2013, the complainant's counsel informed the Committee that the complainant was imprisoned in Uzbekistan. She asked the Committee to appeal to the State party's authorities to have the complainant sent back to Kazakhstan.

The complaint

3. When submitting the communication, the complainant claimed that his extradition to Uzbekistan would be in violation of article 3 of the Convention, as he would be subjected to torture there and would be imprisoned for a long period of time on the basis of fabricated charges. He states that Uzbekistan is well-known for practising torture in police and penitentiary facilities, including on extradited asylum seekers, as was the case with 29 Uzbek citizens extradited by Kazakhstan in 2011.

State party's observations on the merits

4.1 On 27 June 2013, the State party submitted its observations on the merits, informing the Committee that, on 3 May 2012, the Aktobe Court No. 2 approved the detention of the complainant for the purpose of extradition. On 4 May 2012, the Office of the Procurator General of Uzbekistan requested the State party to extradite the complainant for the purpose of criminal prosecution. On 6 October 2009, the Committee on Migration rejected the complainant's application for asylum. On 12 June 2012, UNHCR sent a note verbale to the Office of the Procurator General of Kazakhstan, expressing its disagreement with the decision of the Committee on Migration to turn down the application for asylum in view of procedural violations that took place during the consideration of the complainant's asylum request. According to the State party, the complainant was informed of his right to appeal the decision concerning his request for asylum, but he did not exercise that right. On 25 October 2012, the Office of the Procurator General made a decision to extradite the complainant to Uzbekistan. On 25 December 2012 and on 18 January 2013, respectively, the Aktobe City Court No. 2 and the Aktobe Regional Court assessed whether the extradition was in accordance with the national and international obligations of Kazakhstan. The State party submits that UNHCR agreed with the decision to extradite the complainant to Uzbekistan. The extradition took place on 13 March 2013. Taking into account that the complainant's appeal against the decision to extradite him was reviewed by all available judicial instances, whose decisions became final, and that he did not appeal the decision to refuse his asylum request, there were no legal grounds for his stay in Kazakhstan, which could be endangering national interests and security.

4.2 The complainant was extradited in accordance with the provisions of the Minsk Convention. In addition, the Uzbek authorities provided written assurances to the Office of the Procurator General of Kazakhstan that the complainant would not be persecuted on

political grounds, or for reasons of race, religion or nationality; that he would not be subjected to torture, violence or inhuman or degrading treatment; and that he would be provided with the means to defend himself, including through the assistance of lawyers.

4.3 The State party submits that there were no procedural violations in the complainant's case and there are no grounds for returning him to Kazakhstan.

Complainant's comments on the State party's observations on the merits

5.1 On 22 December 2013, counsel informed the Committee that, upon extradition to Uzbekistan, on 6 June 2013, the complainant was sentenced to 16 years in prison on charges of terrorism, founding religious-extremist, separatist and fundamentalist organizations as part of an organized group, attempting to overthrow the constitutional order and illegally exiting the country. The trial took only three and a half months, which suggests that it was not fair. According to the relatives and the lawyer of the complainant, he was forced, under torture, to confess to the charges and, allegedly owing to the torture suffered, he did not try to defend himself in court. On 6 September 2013, the Qashqadarinsky Regional Court reviewed the cassation appeal of the complainant and confirmed the decision of the first instance court.

5.2 Counsel informs that the complainant is detained with a person infected with tuberculosis. It is possible that he has contracted the disease himself, but does not receive medical treatment. Since the beginning of his imprisonment, the complainant has been sanctioned twice for breaching the internal rules of the penitentiary colony, which could exclude a possibility of an amnesty in the future, and he was also incarcerated in a punishment cell.[1]

5.3 Counsel reiterates that the decision of the Committee on Migration to reject the complainant's asylum application was groundless and unlawful. While considering the complainant's asylum request, the Committee failed to duly take into account the facts and arguments provided in his application concerning the persecution to which he and his wife were subjected, or the torture he suffered in Uzbekistan owing to his religious beliefs.[2] The domestic courts that considered the complainant's extradition appeal should have indicated an error in the assessment of the Committee and quashed its decision.

5.4 Counsel points out a contradiction in the State party's submission concerning the position of UNHCR. According to the State party, UNHCR disagreed with the decision to turn down the complainant's asylum application, but then, according to the State party, it agreed with the decision to have him extradited. Counsel states that such a change of attitude would contradict the mandate of the organization.

5.5 Regarding the argument of the State party that the extradition was based on the Minsk Convention and was in accordance with its national and international obligations, counsel claims that the State party breached its obligations under article 3 of the Convention, in which guarantees are set out against refoulement. According to counsel, this provision should be interpreted narrowly and cannot be overridden by the national or regional instruments to which the State party refers. The breach of the State party's

[1] Counsel explains that in such cells prisoners receive three meals a day, with no water or additional food in between. They are forced to wake up at 5 a.m., then the guards fold the metallic beds so that the detainees cannot rest during the day. There is only a small chair and a toilet in the cell; detainees can wash their hands only with the toilet water. They are taken outside to wash their hands and face only once a day, in the morning. The cell is damp and cold, but prisoners are allowed to wear warm clothes only if it gets very cold outside. There is no medical assistance, even if a person gets sick.

[2] Counsel refers to the facts submitted to the Committee on 14 February 2013.

obligation was aggravated by its failure to respect the Committee's request not to extradite the complainant while his case is under consideration.[3]

5.6 Further, counsel contends that the State party ignored appeals from NGOs and international organizations not to extradite the complainant. She refers, in particular, to the letter dated January 2013 from the NGO Kazakhstan International Bureau of Human Rights and Rule of Law, in which the complainant's case was compared to that of 29 asylum seekers extradited by Kazakhstan to Uzbekistan in 2011. The NGO also referred to multiple pieces of evidence indicating that people have been tortured on religious grounds in Uzbekistan, and urged the authorities to suspend the extradition.

5.7 Counsel additionally emphasizes that Kazakhstan and Uzbekistan are both members of the Shanghai Cooperation Organization and the Collective Security Treaty Organization, both of which have established lists of terrorist, extremist and separatist organizations and persons. These lists are not subject to judicial review and the names are added to them arbitrarily. She also refers to the Committee's concluding observations on the second and third periodic reports of Uzbekistan, in which the Committee expressed its concern about the widespread use of torture by police and in prisons in Uzbekistan (CAT/C/CR/28/7 and CAT/C/UZB/CO/3).

5.8 Counsel invites the Committee to find that extradition of the complainant constitutes a violation of article 3 of the Convention and to recommend that the State party provide the complainant with adequate compensation, return him to Kazakhstan and avoid similar violations in the future.

Additional information by the State party

6.1 On 11 March 2013, the State party reiterated that the claims regarding unlawful extradition of the complainant and unjustified rejection of his asylum claim are groundless. According to the national legislation, the courts can only consider a claim on substance and are not in a position to raise matters on their own initiative. They could not have reviewed the decision of the Committee on Migration regarding the complainant's asylum application, which the complainant did not appeal before the relevant courts. Taking into account that the decision of the domestic courts concerning the complainant's extradition became final, that the complainant did not appeal the decision of the Committee to turn down his application, and given the threat he could pose to the national security and interests of Kazakhstan, he was transferred to Uzbekistan under the Minsk Convention.

6.2 The claim that the extradition took place against the recommendations of UNHCR is erroneous. On 12 June 2012, the Office of the Procurator General received a note verbale from the UNHCR Regional Office, in which UNHCR expressed disagreement with the Committee on Migration to turn down the complainant's asylum application and recommended granting him international protection. However, in a note verbale dated 10 October 2012, the UNHCR Regional Office informed the Office of the Procurator General that it would leave the decision on extradition of the complainant to the State party.

6.3 After receiving the note verbale from UNHCR, the State party requested the assurances of the Uzbek authorities that the complainant would not be persecuted for political motives or for reasons of race, religion, nationality or political opinion; that he would not be subjected to torture, violence or inhuman or degrading treatment; and that he would be provided with the means to defend himself, including through legal assistance. The said guarantees were received and the State party does not have grounds for doubting

[3] Counsel compares the extradition of the complainant to the extradition of 29 persons from Kazakhstan to Uzbekistan in 2011, regardless of the Committee's request to suspend the procedure.

them. In accordance with the Minsk Convention, the State party also requested that it be provided with the materials concerning the criminal investigation against the complainant and its results. On the basis of these documents, the State party's authorities concluded that the complainant was sentenced for the crimes indicated in the extradition request and the sentence is proportionate to the gravity of the committed crimes and is not aimed at subjecting the complainant to repression, torture or inhuman treatment.

6.4 The decision to extradite the complainant was made in accordance with national and international law and there are no grounds to return him from Uzbekistan.

Issues and proceedings before the Committee

The State party's failure to cooperate and to respect the Committee's request for interim measures pursuant to rule 114 of its rules of procedures

7.1 The Committee notes that the adoption of interim measures pursuant to rule 114 of its rules of procedure, in accordance with article 22 of the Convention, is vital to the role entrusted to the Committee under that article. Failure to respect that provision, in particular through such irreparable action as extraditing an alleged victim, undermines the protection of the rights enshrined in the Convention.[4]

7.2 The Committee observes that any State party that has made a declaration under article 22 (1) of the Convention recognizes the competence of the Committee to receive and consider complaints from individuals who claim to be victims of violations of the provisions of the Convention. By making such a declaration, States parties implicitly undertake to cooperate with the Committee in good faith by providing it with the means to examine the complaints submitted to it and, after such examination, to communicate its comments to the State party and the complainant. By failing to respect the request for interim measures transmitted to the State party on 28 February 2013, the State party seriously failed in its obligations under article 22 of the Convention because it prevented the Committee from fully examining a complaint relating to a violation of the Convention, rendering the action by the Committee futile and its findings without effect.

Consideration of admissibility

8.1 Before considering any complaint submitted in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party has recognized that the complainant has exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention.

[4] See communication No. 444/2010, *Abdussamatov et al. v. Kazakhstan*, decision on admissibility of 15 November 2011, paras. 10.1 and 10.2.

9.2 The Committee must determine whether the extradition of the complainant to Uzbekistan constitutes a violation of the State party's obligations under article 3 (1) of the Convention not to expel or return ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee takes a decision on the question in the light of the information, which the authorities of the State party had or should have had at the time of the extradition. Subsequent events are useful for assessing the information that the State party actually had or should have had at the time of extradition.

9.3 In assessing whether the extradition of the complainant to Uzbekistan constitutes a violation of the State party's obligations under article 3 of the Convention, the Committee must take account of all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The Committee reiterates that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

9.4 The Committee recalls that, in its general comment No. 1 (1996) on the implementation of article 3 of the Convention in the context of article 22, it noted that the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being "highly probable", but it must be personal and present (para. 6). In this regard, in previous decisions, the Committee has determined that the risk of torture must be foreseeable, real and personal .

9.5 The Committee notes counsel's claim that torture and ill-treatment, in particular of extradited asylum seekers, seems systematic in Uzbekistan. It also notes the detailed allegations that, in the past, prior to his departure to Kazakhstan, the complainant was exposed to persecution on religious grounds and ill-treatment by the Uzbek authorities. The Committee takes note, next, of counsel's argumentation that the proceedings in the State party leading to the extradition of the complainant were not fair, as no interpreter was provided; the courts did not consider in substance the complainant's allegations of the risk of torture upon extradition or review the decision of the Committee on Migration to turn down his application for asylum. It further notes the State party's assertion that the complainant and his lawyer were notified about the right to request an interpreter, but did not do so; that UNHCR, although initially disagreeing with the outcome of the asylum proceedings, left it to the State party to decide on the complainant's extradition. The State party also expressed its view that the extradition proceedings were in accordance with both the domestic and international norms and that the courts, which considered the complainant's appeals against the extradition decision, were not competent to review the decision of the Committee on Migration to turn down his asylum request. The Committee takes due account of the State party's statement about the assurances obtained from the Uzbek authorities that the complainant would not be persecuted for political motives, or for reasons of race, religion, nationality or political opinion; that he would not be subjected to torture, violence or inhuman or degrading treatment. It also notes the information submitted by counsel that, following his extradition to Uzbekistan, the complainant has been sentenced to 16 years' imprisonment there, with pressure and ill-treatment allegedly used during the criminal proceedings, resulting in the complainant's forced confession of crimes and his silence during the trial. The Committee finally notes the State party's argument that the criminal investigation corresponded to the charges against the complainant specified in the request for his extradition, and that the sentence was not aimed at subjecting him to repression or torture.

9.6 With regard to the existence of a consistent pattern of gross, flagrant or mass human rights violations, the Committee recalls its concluding observations on the third periodic report of Uzbekistan, in which it expressed its concern about numerous, ongoing and consistent allegations of the routine use of torture and other cruel, inhuman or degrading treatment or punishment by law enforcement and investigative officials or with their instigation or consent, and that persons who sought refuge abroad and were returned to the country had been kept in detention at unknown places and possibly subjected to breaches of the Convention (see CAT/C/UZB/CO/3, paras. 6 and 9).

9.7 The Committee notes that the complainant is reportedly practising his religion outside of official Uzbek institutions. It also notes that the complainant was extradited pursuant to a request from Uzbekistan accusing him of serious crimes, including religious extremism and attempts to overthrow the constitutional order, and on the basis of the State party's assessment that he could pose a threat to the State party's interests and security. The Committee reiterates its concern, expressed in its concluding observations on the second periodic report of Kazakhstan, about forcible returns to Uzbekistan in the name of regional security, including in the context of the fight against terrorism, and the unknown conditions, treatment and whereabouts of persons returned (see CAT/C/KAZ/CO/2, para. 15). It also notes that the non-refoulement principle in article 3 of the Convention is absolute and a possible security risk does not absolve the State party from honouring its obligation to refrain from expelling or returning ("refouler") an individual to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.[5]

9.8 In the circumstances of the present case, the Committee considers that, in its own concluding observations, as well as in the light of the information presented to it in the present case, the pattern of gross, flagrant or mass violations of human rights and the significant risk of torture or other cruel, inhuman or degrading treatment in Uzbekistan, in particular for individuals practising their faith outside of the official framework, has been sufficiently established. In this context, it observes that the complainant argued that he was subjected to religious persecution, including detention and torture, before his departure to Kazakhstan.

9.9 The Committee recalls that, under the terms of its general comment No. 1, it will give considerable weight to findings of fact that are made by organs of the State party concerned, but that the Committee is not bound by such findings and has the power, provided under article 22 (4) of the Convention, to carry out a free assessment of the facts based upon the full set of circumstances in every case.[6] In the present case, the Committee observes that the complainant, who has been previously prosecuted in Uzbekistan for his religious beliefs, and who was charged with the creation of an extremist organization and terrorism in Uzbekistan and extradited by the State party on the basis of those charges, has sufficiently demonstrated that a foreseeable, real and personal risk of torture existed for him upon return to Uzbekistan. In such circumstances, the courts of the State party were obliged to duly assess the possible risk of torture run by the complainant under both national (art. 532, para. 5, of the Criminal Procedure Code) and international (such as art. 3 of the Convention) provisions. The Committee therefore concludes that the State party's authorities have failed in their duty to carry out an individualized risk assessment before

[5] See, mutatis mutandis, communications No. 444/2010, *Abdussamatov et al. v. Kazakhstan*, No. 39/1996, *Paez v. Sweden*, Views adopted on 28 April 1997, No. 110/1998, *Núñez Chipana v. Venezuela*, Views adopted on 10 November 1998, para. 5.6, and No. 297/2006, *Singh Sogi v. Canada*, decision adopted on 16 November 2007.

[6] General comment No. 1 and, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.

returning the complainant to Uzbekistan. Accordingly, the Committee concludes that the State party's extradition of the complainant to Uzbekistan constitutes a breach of article 3 of the Convention.

9.10 Regarding the diplomatic assurances received by the State party from the Uzbek authorities as sufficient protection against this manifest risk, the Committee recalls that such assurances cannot be used as an instrument to avoid the application of the principle of non-refoulement. The Committee notes that the State party failed to provide any sufficiently specific details as to whether it has engaged in any form of post-expulsion monitoring and whether it has taken any steps to ensure that the monitoring is objective, impartial and sufficiently trustworthy.

10. The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a breach by the State party of articles 3 and 22 of the Convention.

11. In conformity with article 118, paragraph 5, of its rules of procedure, the Committee urges the State party to provide redress for the complainant, including regular visits and effective monitoring to ensure that he is not subjected to treatment contrary to article 3 of the Convention. The complainant is also entitled to adequate compensation. The Committee wishes to be informed, within 90 days, of the steps taken by the State party to respond to these Views.

Appendix

[Original: English]

Individual (dissenting) opinion of Committee member Alessio Bruni

1. In paragraph 10 of the Committee's decision on this case, it is stated: "The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a breach by the State party of articles 3 and 22 of the Convention".

2. It is my opinion that the following formulation of the decision would have better reflected the facts of the case:

> The Committee, acting under article 22 (7) of the Convention, decides that the facts before it reveal a breach by the State party of article 3 of the Convention.
>
> In addition, the Committee wishes to recall that, on 28 February 2013, it requested the State party not to extradite the complainant to Uzbekistan while his communication was under consideration by the Committee, in accordance with rule 114 of its rules of procedure. Nevertheless, the complainant was extradited to Uzbekistan on 13 March 2013.
>
> The non-compliance by the State party with the Committee's request caused a serious damage to the effectiveness of the Committee's deliberations on the case under consideration and raised a serious doubt about the willingness of the State party to implement article 22 of the Convention in good faith.

3. It is my opinion that, in any case, the Committee should have informed the State party in advance that, if it did not comply with the Committee's request for interim measures, the Committee could consider such non-compliance as a violation of article 22 of the Convention. A State party cannot be held responsible for a violation of the Convention without being informed of the Committee's views on the consequences for the State party of its non-compliance with one of the Committee's rules of procedure.